THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.19591 of 2006

DATED: 30-10-2007

Between:

L.A.Yadagiri and another

..Petitioners.

and

State Bank of Patiala, Hyderabad and another

..Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.19591 of 2006

ORDER:

This Court ordered notice before admission on 22.09.2006 and pending further orders, this Court also directed the respondents not to interfere with the possession of the petitioners in respect of the property in question without following due process of law.

2. The second respondent filed WVMP No.1640 of 2007 to vacate the interim order. The first respondent filed counter-affidavit. Reply affidavits are filed in reply to the counter-affidavits filed by respondents 1 and 2 as well.

3. Sri J.Prabhakar, learned counsel representing the writ petitioners had taken this Court through the contents of the affidavit filed in support of the writ petition and also the stand taken in the reply affidavits and would maintain that the procedure could not have been followed, as contemplated under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act') for the purpose of convenience. The learned counsel also pointed out that the particulars given even in the counter-

affidavit are not the correct particulars. On verification of the documents, as specified had been traced, even otherwise, the said document referred to is not in relation to the property in question. At any rate, the counsel would submit that the procedure as contemplated by the provisions of the Act had not been followed. Hence, suitable directions are to be given and till then the possession of the petitioners relating to the subject matter of the writ petition not to be disturbed.

4. On the contrary, Sri K.V.Subba Rao and Sri Venkateswarlu Samisetty, the counsel representing the respondents had taken this Court through the counter-affidavits and would maintain that the procedure had been followed and even otherwise, in a case of this nature, writ petition cannot be maintained since the petitioners are having an effective alternative remedy.

5. Heard the counsel.

6. The writ petitioners filed the present writ petition for a writ of mandamus declaring the action of the respondents in seeking to dispossess the petitioners from plot No.G2 bearing municipal No. 30-265/14/1, on plot No.6/1 in Survey Nos.298/1 and 303/1 at officers colony, old Safilguda, Malkajgiri, Hyderabad as illegal and arbitrary and issue a consequential direction directing the respondents not to interfere with the peaceful possession and enjoyment of the same.

7. The first writ petitioner had sworn to the affidavit filed in support of the writ petition and it is averred that he is the absolute owner, title holder and possessor of plot No.G2 bearing municipal

No.30-265/14/1 on plot No.6/1 in Survey No.298/1 and 303/1 at officers colony, old Safilguda, Malkajgiri, Hyderabad. It is further stated that he purchased the above flat from Mr.Jalendher Goud and M/s.Soney Constructions under a registered sale deed dated 12.11.2003 bearing Doct.No.6748/03 registered in the office of Sub-Registrar, Malkajgiri. It is also stated that as there is a mistake in the mentioning of constructed built up area, a rectification deed was executed on 19.11.2003, which was registered as doct.No.6905/03. It is submitted that ever since the date of sale deed, he had been in occupation and enjoyment of the same as absolute owner and titleholder and he is living in the said flat with his family. It is stated that petitioner No.2 is his wife and she had also signed the loan papers for the facilities availed by them from the first respondent for the purpose of acquiring the said flat. Further, it is stated that they have been paying instalments to the first respondent bank from time to time. However, on account of serious set back in the family, they could not repay the loan amount as per schedule. It is also stated that his brother-in-law and family met with severe accident, on account of which, his brother-in-law and his two daughters were admitted in the hospital and he had spent about Rs.1,00,000/- for the treatment of his brother-in-law. Unfortunately, he did not survive. It is also stated that the two daughters were hospitalized for about one month and he had spent about Rs.75,000/- for their treatment. His father is no more and therefore, he has to look after them also. As a matter of fact, if the instalments are to be taken into account, the petitioners are due to the bank approximately around Rs.75,000/-. It is also stated that they have been personally visiting the first respondent bank earlier and requested to permit

them to pay the amount due in soft instalments by extending certain concessions on the interest as was being done in respect of similar loan accounts. Further, it is stated that while things stood thus, the Manager of the first respondent bank Sri Singh came to the flat of the petitioners along with two other unknown persons claiming that the subject flat was sold to respondent No.2 who is none other than the brother of the proprietor of the builder i.e. M/s.Sony Constructions. At that time, he was not at home. His wife i.e. petitioner No.2 requested the Manager to furnish copy of proceedings and the sale deed. They stated that they would not be able to give the particulars of the sale transactions unless their head office permits them to do so. This was quite surprising and shocking, as they were only demanding the particulars so as to enable them to take appropriate steps in the matter. The Manager of the first respondent bank along with the said two persons directed them to vacate. It is further stated that later, the petitioners went to the bank on 05.05.2006 and the Manager of the first respondent bank handed over a copy of the draft notice dated 15.11.2005. It appears that this is only a draft notice, which was proposed to be given to the borrower and was never despatched. Perhaps, the same was never received by them. The same is purported to be a notice under Section 13 (ii) of the ordinance. Perhaps, the respondent intended this to be a notice under Section 13(ii) of the Act. It is further stated that they never received any notice and they could not make any representation or submit their objections in terms of Section 13 (3A) of the Act. It is also submitted that as of now, they have not been supplied with the statement of account, copies of agreements etc., which will enable them to verify the correctness of the same. Further, it is stated

that the petitioners may be due around Rs.70,000/- or so inclusive of interest, however respondent No.1 demanded a sum of Rs.8,25,542/- as on 15.11.2005. He came to know of the same during last week, when on his personal visit to the branch, at his several requests, the officials of respondent No.1 furnished copy of letter dated 15.11.2005. In fact, he reiterated that they did not receive any notice. Further, it is stated that respondent No.1 has no right to dispose of the property, dispossess them high-handedly and occupy the same under the guise of any sale transaction. The action of the respondents is violative of principles of natural justice, illegal, arbitrary and contrary to the provisions of the Act. Respondent No.1 has to enforce its rights by moving for appropriate relief. The unilateral action on the part of respondent No.1 is biased and will cause irreparable loss and injury. It is also stated that the petitioners are prepared to clear the outstanding dues, if some time is given. Certain further facts are also had been narrated in the affidavit filed in support of the writ petition.

8. In the counter-affidavit filed by respondent No.1, it is stated that the writ petitioners availed a loan facility of Rs.7,55,000/- from the first respondent Bank on 06.11.2003 and they have to repay the loan amount in monthly instalments commencing from March, 2004 and they have till today repaid a sum of Rs.1,10,000/- only. Further, it is stated that the writ petitioners have committed series of defaults in repayment of the loan. Therefore, the first respondent Bank issued a notice dated 15.11.2005 under Section 13(2) of the Act, by way of registered post with acknowledgement due calling upon the petitioners to discharge the liabilities within sixty days from the date of receipt of the notice, failing which the

Bank would proceed further as per the provisions of Section 13(4) of the Act. The petitioners have not given any reply nor responded to the said notice. In reply to the averments made in para 8 of the affidavit, it is stated that the Bank has taken possession of the property as per the provisions of the Act and the same was published in Eenadu newspaper on 17.01.2006 informing the general public not to deal with the subject property. On 12.04.2006, the subject property was put to auction, by way of publication of auction notice in the newspapers. The auction was knocked down in favour of the second respondent, and a Sale Certificate was also issued in his favour. The Bank requested the writ petitioners to vacate the premises and give vacant and peaceful possession of the property to the second respondent. Further, in reply to the averments made in para 9 of the affidavit filed in support of the writ petition, it is stated that a draft notice dated 15.11.2005 was despatched to the petitioners by way of a registered post with acknowledgment due. The petitioners were given ample opportunity for repayment of the loan. It was only after giving due and sufficient opportunity to the petitioners, the Bank proceeded under the provisions of the Act. The auction sale conducted by the Bank on 12.04.2006, was in accordance with the provisions of the Act. Further, it is stated that there is an effective alternative remedy with the Debts Recovery Tribunal and the petitioners as well can approach the Debts Recovery Tribunal and without exhausting such remedy, straight away the petitioners approached this Court under Article 226 of the Constitution of India. Hence, on that ground the petition is liable to the dismissed.

9. In WVMP No.1640 of 2007 filed by the second respondent

as vacate petitioner, specific stand had been taken that the writ petition is not maintainable. Further, it is stated that the first respondent got issued an auction notice in Eenadu Telugu daily newspaper on 30.03.2006 inviting sealed tenders for purchase of various properties including the subject property proposing to conduct auction of the same on 12.04.2006. In pursuance of the said notification, the second respondent participated in the said auction and became highest bidder and the first respondent has knocked down the same in his favour and a sale certificate was also issued to him vide document No.7049/2006 dated 25.08.2006. He further submitted that the first respondent Bank promised to handover the vacant, peaceful and physical possession of the same within a short period. Thereafter, he made several visits to the office of the first respondent with a request to handover the possession, as he was staying in a rented house despite purchasing the subject flat. He submitted that though the possession was not delivered to him, he had been regularly paying the monthly loan instalments to the first respondent bank. Further, it is stated that while the matters stood thus, the first respondent informed him about the filing of the writ petition by the petitioners herein and the interim orders granted in the writ petition on 22.09.2006. Thereafter, he caused his enquiries and found that the petitioners with a malafide intention by suppressing the true facts filed the above writ petition and obtained interim orders and continuing in the possession of his flat which was purchased by him in the auction conducted by the first respondent Bank without having any sort of right, title or claim over the subject flat. It is also stated that if at all the petitioners intend to take any steps, the alternative remedy available to them is to approach the Debts

Recovery Tribunal and file an appropriate appeal. Without availing that remedy, the petitioners straight away rushed to this Court with unclean hands.

10. In the reply affidavits filed both in reply to the counter affidavit of respondent No.1 and also the counter-affidavit of respondent No.2, certain further particulars had been narrated and the stand taken in the affidavit filed in support of the writ petition again had been reiterated.

11. The Act, Act No.54 of 2002, is enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. Section 13 of the Act deals with enforcement of security interest. Section17 of the Act deals with right to appeal. Reliance was placed on **SIDDH INDUSTRIES, INDORE v. UNION BANK OF INDIA, MUMBAI**[1]**; IVEE INJECTAA LIMITED v. JUNAGADH VIBHAGIYA NAGRIK SAHKARI BANK LIMITED**[2]**; NEEL MADHAV MINING PRIVATE LTD., v. AUTHORISED OFFICER, UNITED BANK OF INDIA**[3] and **MARDIA CHEMICALS LIMITED v. UNION OF INDIA**[4]**.**

12. In the light of the respective stands taken by the parties, several factual controversies, which had been put forth before this Court in the elaborate submissions made by the respective counsel need not be gone into. Even if there are any procedural infirmities, the petitioners are at liberty to invoke appropriate alternative remedy by way of appeal.

13. Hence, this court is not inclined to express any opinion relating to the merits and demerits of the several contentions, which had been advanced before this Court. Accordingly, the Writ Petition is disposed of, giving liberty to the writ petitioners to avail the alternative remedy. Except giving this liberty, no other relief can be granted. No costs.

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P.S.NARAYANA, J

Dated: 30-10-2007

sj

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[1] 2004(1) MPLJ 147

[2] 2005(2) GUJARAT LAW REPORTS 962

[3] 2005(4) ALT 136

[4] JT 2004 (4) SC 245